Start of Robert Frankford Family Collection.

AR 11673

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AR 11673 1/1 Robert Frankford Family Collection 1928- 1963 Archives

NOS RECTOR UNIVERSITATIS LITTERARUM VINDOBONENSIS

HENRICUS PEHAM, universae medicinae doctor, professor artis obstetriciae publicus ordinarius; OTHENIO ABEL, philosophiae doctor, professor palaeobiologiae publicus ordinarius, ordinis philosophorum h. t. decanus; JOANNES MOLISCH, philosophiae doctor, professor anatomiae et physiologiae plantarum publicus ordinarius, promotor rite constitutus, in virum clarissimum

GUALTHERIUM FRANKFURTHER

Vindobonensem, postquam et dissertatione cui inscribitur „Über schwefelhältige Derivate des Acetophenons und Resorcins“ et examinibus legitimis laudabilem in chemia doctrinam probavit, doctoris philosophiae nomen et honores iura et privilegia contulimus in eiusque rei fidem hasce litteras universitatis sigillo sanciendas curavimus.

Vindobonae, die XIX. mensis Iulii MCMXXVIII.

H. Hahn

O. Abel

J. Wolisch

[University of Vienna Phd thesis title page]

Ueber schwefelhaltige Derivate des Acetophenons und Resorcins.

von

Walter Frankfurther.

Diese Arbeit wurde auf Anregung und unter wissenschaftlicher Anle
des Herrn Prof. J. Pollak im Laboratorium für chemische Tech
der Universität Wien ausgeführt.

Wien, im April 1928.

Kreisleitung der Nationalsozialistischen Deutschen Arbeiterpartei

Ried im Innkreis

Tagebuch-Nr. ..... Ried i.I., am 20. April 1938.

D/G.

B e s t ä t i g u n g .

Pg. Rudolf S c h o b e r , Kaufmann Ried i.I., geb. 13. Nov. 1897, war in der Verbotszeit ein treuer und furchtloser Mitkämpfer der NSDAP . Mit seinem Auto stand derselbe jederzeit für Transporte von Pg. , Propagandamaterial Waffen und Sprengstoffen zur Verfügung.

Der Kreisleiter :

N.S.D.A.P. Hitlerbewegung Kreisleitung Ried i. I.

Adolf Gubler
Ried im Innkreis, O.-Oe.
Hartwagnerstraße Nr. 30
Fernsprecher Nr. 57. - Postsparkassen-Konto Nummer 8-186.037

Ried i. I., am 193

Information.

Ich bin 41 Jahre alt, Vollkaufmann, im Besitze eines Gewerbescheines, welcher mich zum Handel mit Waren-aller Art berechtigt.

Durch 12 Jahre war ich selbstständiger Leiter einer Schuhfabrik und bin im Lederhandel branchekundig. Ich habe derzeit die Vertretung einer deutschen Schuhfabrik und habe ich die mittleren und kleineren Kund auf eigene Rechnung beliefert. Infolge des Umbruches war es mir nicht mö lich, eigene Geschäfte zu tätigen, da noch der alte Zoll besteht und sich die Kunde vor Aufhebung des Zolles nicht eindeckt.

Während der Verbotszeit stand ich der NSDAP mit meinem Auto zum Tran port von Parteigenossen, Propagandamaterial, Sprengstoffen und Waffen stets zur Verfügung. Vom März 1937 bis zum Umbruch war ich aktiver SS-Mann in Ried im Innkreis und war es mir nicht möglich, eine lebensfähige Existenz zu gründen. Ich habe nun die Absicht, das Ledergeschäft der Fa. Wilhelm Frankfurter zu kaufen. Vor mehr als 8 Wochen habe ich bei der Arisierungsstelle wegen Kaufes der Firma W. Frankfurter II. Ferdinandstr.5. durch meinen Anwalt Dr. Krumbach eingereicht, welcher auch die Informatio hierüber aufgenommen hat.

Das Geschäft der Firma Frankfurter ist ein ausgesprochenes Importgeschäft und wurde die eingeführte Rohware fast ausschliesslich an Kunden weiterverkauft, die nur Galanterieware, Taschen,Gürtel und dergl. erzeugten und zum Grossteil ins Ausland exportierten. Das derzeitige Lager besteht zu 9o % aus Ware, welche für Galanteriezwecke Verwendung findet.

./.

461—37

Von dem Jahresumsatz in den vergangenen Jahren von rund S 600.000 wurde nur ein geringer Bruchteil auf Schuhwaren verwendet. Die Ware, welche importiert wurde, wurde ausschliesslich für Veredlungszwecke auf Galanterieware, für Taschner etc. gebraucht. Die Ware, welche derzeit lagernd ist, besteht aus Skivers, Krokodil, Eidechsen, Lamm, Ziegen, Velours, Lack- und Kalbleder.

Besonderes Interesse an der Arisierung gerade der Firma W. Frankfurter habe ich deswegen, nachdem ich mit dem englischen Lieferanten dieser Firma bereits verhandelt habe und da es sich zum grossen Teil um ein Kommissionsgeschäft handelt, dieser mir seine Vertretung für die Ostmark übergeben möchte. Bei dieser Gelegenheit möchte ich bemerken, dass der Inhaber der Firma, um welche es sich handelt, W.L.Exner lmtd. London, arisch ist und dem politischen Regime in Deutschland als Mosleyanhänger sympathisch gegenübersteht. W.L. Exner hat auch laufend Lieferungen nach dem Altreich. Ich lege hier das Originalschreiben der Firma Exner bei.

Nachdem ich als selbstständiger Kaufmann im Gau Oberdonau mein Geschäft weiterführen will, lege ich kein Gewicht darauf, dass das Geschäft der Firma Frankfurter mit dem Sitze hier in Wien unter meinem Namen weitergeführt wird, sondern möchte das Importgeschäft von Oberdonau aus führen.

Eingehende Darstellung des Lebenslaufes:

Ich bin gebürtigter Ober-Österreicher und rückte nach einem Jahr Handelsakademie im Jahre 1916 zum Kaiserschützenregiment Nr. 3 ein und diente dort bis zum Zusammenbruch. Ich habe die Offensive im Jahre 1916 gegen Italien mitgemacht.

Nach dem Kriege war ich im väterlichem Geschäft tätig und war vom Jahre 1924 bis 1934 selbstständiger Leiter einer Schuhfabrik. Nachher war ich selbstständig und hatte Vertretungen deutscher Schuhfabriken. Desgleichen führte ich den Schuhhandel auf eigene Rechnung. Bin Vollkaufmann und besitze Gewerbeschein für Handel mit Waren aller Art.
Infolge meiner nationalsozialistischen Einstellung hatte ich während der Verbotszeit beruflich grosse Schwierigkeiten.
Bis Juli 1935 gehörte ich der SA an und stellte mich mit meinem Auto zu Transporten aller Art zur Verfügung. Zur Zeit des 25. Juli stellte ich mich auch zur Verfügung, um an der Erhebung teilzunehmen. Vom März 1937 bis zur Machtübernahme war ich aktiver SS Mann beim Sturm VII/37 in Ried i/Innkreis.

Der Betrieb ist ausführlich zu beschreiben; bei Gesellschaften sind die Besitzverhältnisse klarzustellen!

[Wilhelm Frankfurter]

Geboren 1875. Ich habe mich nach Absolvierung der Schulen dem Lederhandelsgewerbe gewidmet und bin in das Geschäft meines Vaters eingetreten. Später habe ich mit meinem Bruder Jacob Frankfurther die offene Handelsgesellschaft Jacob Frankfurther mit dem Sitz in Wien II., Ferdinandsstr. 5 betrieben.

Nachdem ich bereits in Friedenszeiten die 3-jährige Militärdienstpflicht absolviert hatte, war ich während des Krieges Frontsoldat und zwar stand ich längere Zeit als Zugsführer an der italienischen Front.

Nach Beendigung des Krieges widmete ich mich wieder dem Lederhandel als Gesellschafter der Firma Jacob Frankfurther. Im Jahre 1931 wurde diese offene Handelsgesellschaft aufgelöst. Mein Bruder gründete mit seinem Sohn eine eigene Firma. Ich gründete ein eigenes Geschäft als protokollierte Einzelkaufmann.

Als solcher befasste ich mich fast ausschliesslich mit Import von Rohware aus England. Diese Ware wird hier veredelt und kommt diese Art des Importes auch unter den jetzigen Verhältnissen weiter in Betracht.

Ich will das Geschäft verkaufen, nachdem einer meiner Söhne, der das Geschäft praktisch geführt hat, seinen Wohnsitz in das Ausland verlegt hat. Weiters habe ich von der Geheimen Staatspolizei den Auftrag erhalten, das Land binnen Kurzem zu verlassen.

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

ROYAL COURTS OF JUSTICE
MONDAY 23rd JUNE, 1947.

Before:

MR. JUSTICE ROMER

WILHELM FRANKFURTHER

--v--

W. L. EXNER LIMITED

J U D G M E N T

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

Royal Courts of Justice
Monday, 23rd June, 1947.

Before:
MR. JUSTICE ROMER

WILHELM FRANKFURTHER

- v -

W.L. EXNER, LIMITED

(Transcript of the Shorthand Notes of the Association of Official Shorthandwriters, Ltd., Room 392, Royal Courts of Justice, and 2, New Square, Lincoln's Inn, W.C.2.)

MR. GERALD UPJOHN, K.C., and MR. RAYMOND WALTON (instructed by Messrs. Slaughter & May) appeared on behalf of the Plaintiff.

MR. NEIL LAWSON (instructed by Messrs. Edward Betteley Smith & Stirling) appeared on behalf of the Defendants.

JUDGMENT

MR. JUSTICE ROMER: The Plaintiff, Mr. Wilhelm Frankfurther, sues the Defendant Company, W.L. Exner, Ltd., for an account of certain transactions which took place between the parties in the course of business between them, during a period which ended, as the Plaintiff says, with a credit balance due to him in the Defendants' books, that credit balance being recoverable in London.

There are other matters which arise in the action, but that is the main claim which has to be considered, and the other subordinate matters arise out of that claim, although to some extent they have to be considered independently.

The position of the parties is stated accurately, as I think, in paragraphs 1 and 2 of the Statement of Claim. Paragraph 1 says: "The Plaintiff, who is a Jew, resided formerly in Vienna in the Republic of Austria, where he carried on a leather business known as Firma Wilhelm Frankfurther at 5 Ferdinandstrasse Wien II. The said business was registered in the Register of Businesses at Vienna on the 5th May 1931, with the Plaintiff as its sole proprietor, and with the Plaintiff's son, Paul Kurt Frankfurther, as its Manager or Agent. The said son

carried on all the firm's correspondence with English business houses, as the Plaintiff does not speak or write English."

Then paragraph 2 says: "The Defendant Company is an English Company, having its Registered Office situate at Nos. 50/52, St. Thomas Street, Bermondsey in the County of London, which carries on the business of dealing in leather and leather goods of all descriptions. At all material times one W. L. Exner was a Director of the Defendant Company."

As the result of negotiations which took place, certain agency arrangements were arrived at between the parties, and a record of the arrangements which at all events were agreed at that time is contained in a letter of the 13th December 1933, on page 1 of the correspondence, written by Mr. W.L. Exner on behalf of his firm to the Plaintiff's firm in Vienna, and that letter says: "Dear Sirs, With reference to the correspondence we have had with regard to an agency, we hereby confirm appointing you our Agents for E. I. Tanned Skins and Basils, for Austria, on the following terms: You to receive a Commission of 3 per cent. and to be responsible for the Del Credere. You to be responsible for remittance to us of the amount for which the goods are sold, within 14 days of the date of the sale, unless permission has been given by us to give the purchaser a longer credit. You to confine yourselves to selling our goods only while having our Agency. You to be responsible that all the goods which may be on consignment with you from us are properly insured against all risks. You to disclose to us the name of the customers to whom you sell. Invoices will be sent direct from London to the customer and a copy sent to you after the sale is made. You to advise us immediately you make a sale. This agreement is to be terminable by three months' notice on either side."

The Plaintiff, in addition to saying that the Agency was an exclusive agency, and extended later on to Hungary and Czecho-Slovakia as well as to Austria, sets out what he says were the agreed terms of the agency by paragraph 3 of the Statement of Claim, and he says that they were as follows: "(a) The Plaintiff was to receive a 3 per cent. commission on the value of all direct and indirect sales of the Defendant Company's goods within the above territory, and all such sales were to pass through his hands. (b) The Plaintiff was to guarantee payment for all goods of the Defendant Company sold by him, whether as agent or on his own behalf. (c) The Plaintiff was to pay all disbursements in respect of such goods from the time they left the Defendant Company's premises in London.

"(d) In addition, the Defendant Company was to forward from time to time to the Plaintiff in Vienna free of all charges such goods as it considered suitable for the Plaintiff's market or as recommended by the Plaintiff (hereinafter called 'Consignment Stock') to be held by the Plaintiff on consignment, to be disposed of by him on behalf of the Defendant Company as opportunity offered. On all such sales the Plaintiff was to be paid a Commission of 3 per cent."

Then he says that the arrangement was made verbally in the Autumn of 1933 in London by Paul Frankfurther on behalf of the Plaintiff and by Mr. W.L. Exner on behalf of the

Defendant Company, and that certain modifications were subsequently arrived at on minor matters.

It appears from the evidence of Mr. Paul Frankfurther, which had to be taken on commission because of his impending departure to America, where he now is, that as time went on the business between the Plaintiff's firm and the Defendants developed under three heads, namely, (1) cases where the Defendants sold direct to the Plaintiff's customers who went to London, the Defendants sending the goods to the Plaintoff; (2) cases where Mr. Paul Frankfurther came to London and bought outright; and (3), which was the main type of business, and represented the great bulk of the business, what was called consignment business; and the general arrangement under that head was for the Defendants to forward goods to the Plaintiff accompanied by a pro forma invoice. The goods remained the property of the Defendants until the Plaintiff sold them either to a third party or (as occasionally happened) to himself, either at the pro forma invoice price or at a reduced price authorised by the Defendants; and on a sale taking place the Plaintiff got out, or Mr. Paul Frankfurther got out on his behalf, a sales invoice, and then the Defendants sent a definite invoice for the goods. The Plaintiff got permission from the Austrian authorities to send money to the Defendants in London on production of the pro forma invoices.

Although the Defendants' account with the Plaintiff showed a debit balance of nearly £1,200 in April of 1937, the Plaintiff was in credit to a sum of approximately £2,200 by the 10th of May 1938 in the Defendants' books, and such credit was in fact brought about by reason of funds which were remitted by the Plaintiff as above described, and that is the credit balance which substantially forms the subject-matter of the Plaintiff's claim in these proceedings.

Now, what I have said sufficiently states in outline the general arrangement between the parties, although there were other matters such as the Plaintiff's liability to insure the goods, and the precise rights (if any) of the Defendant Company in relation to the credit balance, and other matters, which fall to be considered later.

The bulk of the relevant documents in this matter are not available, the Defendants' documents having been destroyed by enemy action, although copies, photographic and otherwise, of many documents are fortunately still in the possession of the Defendants and have been available.

On the 10th of March of 1938 Hitler invaded Austria. In April of 1938 Mr. W. L. Exner visited Vienna. The Defendants had at that time goods on consignment with the Plaintiff. Mr. Exner and the Plaintiff and Mr. Paul Frankfurther visited the British Consul in Vienna and told him about the goods on consignment. Mr. Exner said in his evidence that he wanted the Consul to know of them, so that they could not be seized or looted.

Mr. Paul Frankfurther and the Plaintiff said in evidence that the goods were labelled, as a result of the interview with the Consul, but Mr. Exner said that he himself did not know anything about that. At all event,s I think it is quite clear that those gentlemen did what they could with the Consul to ensure the safety of the goods, in view of the troubled times which were prevailing, and to identify the

goods as being British.

Almost immediately after Hitler's entry into Austria the German authorities put State officials known as Commissars, or at any rate, people who have been referred to in this action as Commissars, in charge, practically speaking, of all Jewish businesses in Austria. The Plaintiff's business did not escape these attentions, and one Schober was appointed Commissar of Mr. Frankfurther's business, and took possession.

His arrival was described by Mr. Frankfurther in the witness box, through an interpreter, as Mr. Wilhelm Frankfurther cannot speak English. He said that on a Saturday at the end of April 1938 he was in his bank, and an employee was sent to fetch him from the bank by Mr. Schober, who had apparently entered his office. The employee came to the bank to fetch the Plaintiff, and he went back to his office with her and saw Mr. Schober. He did not hand anything over to Mr. Schober, but Mr. Schober must have appropriated the things. His first words were that he had been appointed Commissary Manager, and he asked the Plaintiff to hand over the keys of the safe of the business. He handed them over. He said "It was not as easy as all that. I was not frightened. I am not a very nervous person"; but he said that when he showed reluctance to hand them over Mr. Schober took up an imperative attitude and demanded the keys, and he then went with the Plaintiff at once to the bank and gave orders that the business account was at once to be blocked. The Plaintiff said that he was told that he had nothing further to do there, and that he and Paul were to remove themselves from the premises and not return there any more.

The Plaintiff said that Mr. Schober demanded money from him in the first conversation; they demanded money without stating any purposes, and "they" mean the Commissars. Mr. Schover demanded the money without stating any purpose. Mr. Schober asked him what was the religion of the office staff, and he replied "Jewish", and then Schobor asked him what was the religion of the warehousemen, and he said "Roman Catholic". Schober at once gave the office staff notice, while he confirmed the warehousemen in their jobs. All this took place about an hour after his first interview with the Plaintiff. Mr. Schober took over on the Saturday. Mr. Schober had not conversation with the Roman Catholic warehousemen in the Plaintiff's presence, but after he had seen them he came back and told the Plaintiff that one of them was very well disposed towards the Plaintiff and did not give him any very friendly reply, and he was a Social Democrat, but on the other hand another one, who was also the Plaintiff's chauffour, declared himself to Mr. Schober to have been illegally a National Socialist, and Mr. Schober thereupon handed over the Plaintiff's keys to this employee with instructions that it was to be he and not the Plaintiff who was to look to the locking of the doors.

Then the Plaintiff said that one of the things that Schober did was to pay over a sum of about 1,500 marks to this employee. Mr. Schober gave the order that this should be paid. The sum came out of the Plaintiff's funds, the Plaintiff's money which he had had from the bank. The Plaintiff then had to leave his office premises.

Mr. Schober's entire attitude, he said, was an aggressive one. Mr. Schober questioned him with a view to

getting information from him which would enable him to have him arrested at once. On this Saturday it was difficult for the Plaintiff to remember whether he was treatened, or in what manner. He went through so much that he could not remember accurately all that happened.

Then he said that it must have been at the beginning of May 1938 that he was imprisoned. In point of fact I think it is agreed on all hands that it was on the 12th of May that he was imprisoned. He said that he saw Mr. Schober after the Saturday interview and before he was imprisoned, and Mr. Schober asked him about foreign balances. The Plaintiff could not help seeing him, as he lived opposite the business. Mr. Schober called him into the office and asked about the foreign balances after he had made enquiries in the office about the books. Schober asked him about the balances, and the Plaintiff replied that he did not concern himself with these matters, and that Mr. Schober should ask his son Paul, who was then in Vienna.

I may say here that Mr. Paul Frankfurther said, and the Plaintiff also said, that it was Mr. Paul Frankfurthor who looked after all foreign businesses, and I think indeed that Mr. Paul Frankfurther went rather further than that and said that his father was more or less a figurehead in the business, the active work being done by Paul himself.

Mr. Schober replied that if the Plaintiff did not give him an answer, he, the Plaintiff, would make the acquaintance of "Lizzie", which was a mocking term for a certain prison. To that the Plaintiff replied that he could say nothing more, and that Mr. Schober should ask Paul. When the Plaintiff was lying in bed, ill, a detective from the Gestapo sat by his bed and questioned him for hours. He questioned the Plaintiff about the credit balances abroad. There was one detective by his bedside, but he said there must have been more outside. The one by his bedside always replied that if he did not reply in full detail, then, "Lizzie". He gave no information about the foreign balances.

Then the Plaintiff went on to tell me about how he came to sign a certain letter, to which I shall refer later, and said that he did so by reason of threats made by a former employee of his, who was married to a National Socialist, and was friendly to him down to the time when Mr. Schober took over, and who after that changed her attitude in a very radical respect. He told me, further, that notwithstanding that he signed that letter, he was thrown into prison and remained there for a considerable time, about three months altogether, except for one interval of two or three days.

Mr. Shober's appointment as Commissar was not in fact dated until the 31st of May 1938, but it was made under a decree or law numbered 80, which was issued on the 13th April 1938, and was headed: "Law as to the appointment of official administrators and official control officers", and it is as follows: Section 1, subsection (1): "For the protection of important public interests, the Reichsstatthalter (Lord Lieutenant for the German Reich) is empowered to appoint official administrators or official control officers for Undertakings having their head office in the Province of Austria. Such appointment is only permissible up to the 1st October 1938." -- That time was subsequently extended by a later decree -- "Administrators or control officers appointed up to that date can continue their activities after that

date." Then subsection (2) is: "Undertakings in the sense of this Law shall also include the branches in Austria of Foreign undertaking." Then subsection (3) is: "At the demand of the competent German Reichs Minister the measures provided in paragraph 1 can only be taken in consultation with himself."

Then section 2, subsection (1) is: "The official administrator shall have full legal powers to act on behalf of the undertaking. During the period of administration the authority of the proprietor of the undertaking or, if the proprietor is a juridical person, the power of its officials, to act on behalf of the undertaking shall be in abeyance."

Subsection (2) is: "If the undertaking is registered in the Commercial Register or in the Register of Public Companies, a copy of the appointment or discharge of the official administrator must be addressed to the Registrar's Court. The latter shall enter the appointment or discharge in the Register."

Subsection (3) is: "The administrator shall sign with the addition: 'Administrator in virtue of the Law as to the Appointment of Provisional Administrators and Provisional Control Officers, Law No. 80/1938.'"

Section 3 is: "The official control officer shall see to it that the business operations are carried on in a manner consonant with the public interests. His orders and instructions within the scope of the undertaking shall be carried out."

Section 4 is: "Official administrators and control officers shall be entitled to suitable remuneration, which shall be fixed by the Reichsstatthalter. The amount of the remuneration shall be determined according to the economic capacity of the undertaking."

Section 5 is: "It shall be incumbent upon official administrators to use in the conduct of the undertaking the care exercised by a responsible business man."

Section 6 is: "The costs of measures taken in virtue of the foregoing provisions shall be borne by the undertaking." Section 7 is: "Anyone who, by himself or with other persons, has taken up since the 10th March 1938, a managing position or a supervisory post in an enterprise belonging to another person, shall notify the Reichsstatthalter within 3 days after the coming into force of this Law." Section 8 is: "The Reichsstatthalter can delegate his powers under this law to a representative."

Section 9, subsection (1) is: "This Law shall come into force on the date of its publication and shall become invalid on the date to be determined by Decree of the Reichsstatthalter. (2) The Reichsstatthalter is charged with the carrying out of the present Law."

That Law is signed by certain Nazi dignitaries, including Seyss-Inquart, and was promulgated by Seyss-Inquart, the Reichsstatthalter in Austria.

On the 5th of May 1938 Mr. Paul Frankfurther left Vienna and came to London, and on the 6th of May a letter was written to the Defendants signed by the Plaintiff, Mr. Wilhelm Frankfurther, and also by the Commissar, Mr. Rudolf Schober. That letter was as follows: "I beg to inform you that, as you may have heard from my son, my Firm has been placed under the control of a Commissar. No dealing with my credit balance with you without the consent of Mr. Rudolf Schober, the Commissar, will be legally binding. For the time being Mr. Paul Frankfurther is authorised to collect from you to the debit of my account an amount not exceeding £20. Yours faithfully, Wilhelm Frankfurther."

The Plaintiff in evidence said that he signed that letter, although he did not write it, under the compulsion which was indicated by the evidence which he gave and to which I have referred, the compulsion being exercised by the woman Binet, who had been in his employment, and who was applying compulsion and threatening the Plaintiff on behalf of the Commissar, who had evidently become her master; and as I say, notwithstanding the fact that he signed that letter, he was put into prison on the 12th of May, and he remained there, with one short interval of a day or two, until March 1939, when he was released and came to England, where he has lived since. He said that he had to leave some £10,000 to £15,000 behind him in Austria, and could only bring with him his clothing and some furniture.

On the 10th of May an interview took place at the Defendants' offices between Mr. Paul Frankfurther, Mr. W.L. Exner, and a Mr. Guy, who is another director of the Defendant Company. Mr. Paul Frankfurther could not at that time speak English very well, and the conversation took place partly in English and partly in German. Mr. Paul Frankfurther, in his evidence which was taken on commission, said firstly that he told Mr. Exner that the letter which I have just read, the letter of the 6th of May, must have been and certainly was written by his father under compulsion, and secondly that he told Mr. Exner, and advised Mr. Exner, to do what he could to get out of Vienna the goods which he then had on consignment with the Plaintiff.

Mr. Exner in his evidence denied that Mr. Paul Frankfurther said either of those things. He told me that Mr. Paul's sole worry was to get the Defendants' accounts to square with the Plaintiff's account in Vienna for the sake of his father's safety, especially in the matter of a certain invoice for £1,012, to which I shall have to refer again, and which apparently disclosed a discrepancy which led to some enquiries by the Commissar later on.

Mr. Guy in his evidence corroborated, in part, the evidence upon this matter given by Mr. Exner, but inasmuch as he cannot understand German, I cannot attach very much weight to his evidence as to what was not said, as distinct from his evidence as to what was said. Mr. Paul Frankfurther and Mr. Exner both agree that Paul was in fact given the £20 which was referred to in the letter.

Mr. Paul Frankfurther remained in London for some days, and was in pretty constant touch, I fancy, with Mr. Exner, but Mr. Exner said in evidence that during that time he never discussed the matter of his goods which were on consignment in Vienna, and which were apparently worth, as the Defendants say, something like £2,000, and as the

Plaintiff says, something like £2,800. He says that he never discussed those goods with Mr. Paul Frankfurther all the time that Mr. Paul was in London, and he has no recollection of their being discussed at all. Mr. Paul Frankfurther was then given employment by the Defendants, and he went to Paris on the Defendants business.

In the meanwhile Mr. Schober, having got into the saddle, opened up communications with the Defendants, and certain correspondence developed. On the 14th of May Mr. Schober wrote to the Defendants informing them that he was entrusted by the authorities with the administration and management of Messrs. Wilhelm Frankfurther. Then he raised this question of the £1,012, and raised a query upon it and certain other items, and finished up by saying: "In order to be able to continue business with you smoothly I should like to clear up the questionable items and I beg you therefore to let me hear from you in our mutual interests at the earliest possible moment. Yours faithfully, The Commissarian Leader, Rudolf Schober."

On the 17th of May the Defendants replied, and in their letter they dealt with the matter of the £1,012, and said: "We understand from your letter that you are now in charge of the business, and we would be extremely grateful if you could use your best endeavours to sell as much of our stock out there as quickly as possible. You will quite appreciate that we want to get as high a price as possible for our goods, but if it is a question of making some slight concession in price, if you will write or wire us the best bid you can get, we will do our best to meet you.

"We presume you know the basis on which we did business with Messrs. Frankfurther, but in case you are not quite sure about the position, it is as follows:- Messrs. Frankfurther get a commission of 3 per cent.; They were responsible for the del credere of the customer, that is, that the goods would be paid for; They were responsible for all Insurance and Freightage, and all other expenses; They had to charge their buyers for all charges such as freight, etc., incurred after the goods left our warehouse.

"We hope you will do your very best for us, and we on our part will give you all the support we can. We enclose herewith a list of some offers we have had direct from Madras as a guide to present day prices. We note you want a complete copy of the account as from the 3rd April. We are having this typed out, and will endeavour to send it on to you in to-morrow's mail; if not, we will send it off without fail on Thursday. We will do all we can to facilitate business, and look forward to your news." Then Messrs. Exner wrote to Mr. Paul Frankfurther on the 19th of May enclosing an account.

Then Mr. Schober wrote again on the 28th of May confirming the receipt of the letter of the 17th and the account, and saying: "With respect to your credit balance with the firm R. Singer, I beg to inform you that this firm applied some time since to make the remittance; they informed me today that they expect shortly to obtain permission. As you will have already gathered from correspondence and telephone conversations in the matter of the inspection of the affairs of the firm Wilhelm Frankfurther" -- Then he refers again to the sum of £1,012.

Then he says: "Mr. Frankfurther expressed to me the

intention to liquidate the business, and I also consider this the best in the prevailing circumstances. If you will assist me in the sale of the goods still remaining here by making favourable prices, the clearing of the Warehouse would undoubtedly be effected much more quickly. As you will see from the Sale Notes Nos. 20/21/22 enclosed herewith, the sale of your goods is proceeding quite normally, but I have had very considerable difficulty in obtaining your prices.

"You will likewise find enclosed Copy invoice relating to the goods supplied to H. Neider).Winheim. I note from your Statement of Account as at 10th May 1938 that our Credit Balance with you is £2258. 9. 5. I assume that you would be interested in continuing the business in Vienna, and I am very willing to place you in touch with suitable interested parties, which would also make possible the continuance of business in greater Germany without friction. I await your valued news, and remain Yours etc., Rudolf Schober". Then he says in a postscript that he finds it essential to come to London and will advise them of the date later on.

Then, as I am dealing with the correspondence, I may say that there is a letter on page 32 from Mr. Hammerman, dated the 1st June 1938. Mr. Hammerman had been a lawyer, the lawyer of Mr. Frankfurther, but was disabled from practising further in Austria, and he was writing this letter, he told me, as a friend of the family.

He wrote to Messrs. Exner in the following terms; "Dear Sirs, As Solicitor of Herr Wilhelm Frankfurther I have the honour of informing you of the following. The commissarian manager of Messrs. Wilhelm Frankfurther Herr Rudolf Schober and the Accountant Herr Diplom Kaufmann Gerhard Felser are coming to you with the consent of Herr Wilhelm Frankfurther and my consent with the purpose of solving some pending questions. I beg you on behalf of Herr Wilhelm Frankfurther to give these gentlemen all information they want and generally to treat them in such a way as you would have done with Herr Wilhelm Frankfurther or his agent respectively. I beg you further to accept and treat upon all dispositions regarding the account of Messrs. Wilhelm Frankfurther so far as is necessary for their stay with you. In case you may doubt my authority I beg you to refer to Herr Paul Frankfurther who will confirm my authority."

Mr. Hammerman in his evidence told me that in point of fact paragraph 2 of that letter was completely untrue, and that he slipped in the last paragraph into the draft of the letter which had already been prepared, hoping that Messrs. Exner would approach Paul, who of course was in London, who would tell them the true position of affairs and warn them that they ought to ignore the letter.

Mr. Hammerman said that he signed this letter because, although he did all that he possibly could for the Frankfurther family, not unnaturally, as he himself was a Jew, he was afraid of being sent to prison as well. The Plaintiff knew nothing of this letter, because the Plaintiff was already languishing in jail.

Then Messrs. Exner wrote to Mr. Paul Frankfurther on the 13th June 1938, but I do not think that I need read that letter, and that was followed by a visit by Mr. Schober to London.

Th n Mr. Schobert wrote again on the 4th of July a letter saying: "I beg to confirm the contents of your letter and ask you to please excuse my having not returned to the matter before. I am greatly interested in the affair and have already made some arrangement for the purchase of the Firm."; and then later on in that letter he said: "You would greatly oblige me if you could let me have at the earliest possible moment the lowest present prices for all goods stored with me, as I want those data in connection with the purchase."

Then there is a letter on page 37 to Messrs. Exner, which Mr. Schober signed, "With German Greetings, Administrator according to the 'Law as to the appointment of Official Administrators and Control Officers'"; and that letter was sent to Mr. Exner, but I do not think I need refer to it in any detail.

Then on page 38 of the correspondence there is the appointment of Mr. Zauner as Commissar in the place of Mr. Schober, and that is dated the 3rd August 1938, so that presumably from that time onwards Mr. Zauner, and not Mr. Schober, was the Commissar; and one may not be too cynical, perhaps, if one regards that changeover as being not altogether unconnected with the intention expressed by Mr. Schober on the 17th of August in a letter to the Defendants to buy the Plaintiff's business.

That letter is on page 40, and in the course of it he said: "As you know I have the intention to buy the business but this was impossible for me as administrator. I am hoping that I shall obtain shortly the so-called provisional decision whereafter I could buy goods in my own name. You would highly oblige me if you could let me have a letter stating that in case the purchase of the business is completed you would entrust me with the agency for your firm for the East County (Austria).

Then it should be noted that on the 16th May 1939 the Foreign Office wrote a letter indicating that on the 2nd of April 1938 "His Majesty's Ambassador at Berlin addressed a note to the German Government stating that His Majesty's Government had decided to withdraw His Majesty's Legation from Vienna and replace it by a Consulate General, and requesting the issue of an exequatur to the Consul-General. This action involved recognition of the fact that Austria had ceased to exist as an independent State and had been incorporated in the German Reich."

Then on the 14th of June 1939 the Defendants wrote to Mr. Schober saying that they understood that Mr. Wilhelm Frankfurther and his son Paul were under the impression "that we are in possession of certain monies to which they are entitled, and they are making a claim on us for a sum in the region of £3,000. We might mention at this stage of course, that their claim, as you are no doubt aware is entirely without foundation, as the monies which were at their credit when you took over control of the business, have since been disposed of, in accordance with your own instructions acting as Commissar. In actual practice you yourself purchased goods from us and apportioned monies from the balance by way of payment."

The Accountant of the Company, who gave evidence, said that it was he who wrote that letter, and he said that

the words "our Vienna stock" had been omitted from this letter, and that it should be "In actual practice you yourself purchased goods from our Vienna stock and apportioned monies from the balance by way of payment".

Then the letter goes on to say that Messrs. Exner will be obliged if Mr. Schober can answer them precisely upon certain points, and then they set out a number of questions which they ask Mr. Schober to answer in relation to Mr. Wilhelm Frankfurther. Mr. Exner said that he almost certainly saw that letter before it went out; he did not remember it, but in the ordinary course of business he said he was almost sure to have seen that letter before it was sent.

Then finally Mr. Schober, on the 3rd July 1938, answered and said: "According to the law of April 3rd 1938 on the appointment of Managing Commissioners and Supervisors, Austrian Gazette 80/1938, by Order of the Representative of the Reich dated 3rd July 1938, the firm Wilh. Frankfurther, Vienna II, Ferdinandstrasse 5 (registered firm) was put in charge of a Managing Commissar on the 29th April 1938. He took over all the rights and obligations of the owner, to the exclusion of the letter, and was entitled to do business and make transactions for the firm quite independently. No settlement of accounts with the owner was required. The firm has been wound up and its industrial licence returned. I, personally, only acted as Managing Commissar until July 1938 and my duties were then taken over by Mr. Walter Zauner. Later a Liquidator was appointed to the firm."

Then later on in the same letter he says: "For your guidance I may add that my duties as Managing Director of the Firm Frankfurther were taken over in July 1938 by Mr. Walter Zauner and that towards the end of the year a Liquidator was appointed to the firm. In any case the owner of the firm has no claims. The owner of the firm was under arrest and all business with him was carried through quite regularly. I know nothing about price supplements and all special abatements or discounts would be payable to the firm of Frankfurther in liquidation and not to the owner of the firm."

Mr. Schober sold off the Defendants' goods on consignment from time to time, but he did not remit any proceeds with the exception of a sum of £122 in December of 1938, and a further sum of £207 in January of 1939. The Defendants apparently received from time to time advice from Mr. Schober of the sales, and debited the amounts against the Plaintiff's credit balance in their books, and on receipt of the above two sums which they received from Mr. Schober the account was closed. I do not know what became of the Plaintiff's business in Vienna, or what is now the position of that business. I do not know whether in fact it was liquidated, or what happened to it.

On the above outline of the facts various questions arise, and I propose first to consider the effect of Mr. Schober's appointment as Commissar, and in relation to Law 80 the first question that arises is: "Was it intended to be extra territorial, or was it intended to be confined in its scope to Austrian territory?".

The Decree itself is silent on the point. Dr.

Bretsch, who had a knowledge of the Austrian law acquired by him during the years 1910 to 1920, when I think he was working with a legal firm, although not able to practice with the full rights of an Austrian advocate, because he was not of Austrian nationality, said that Law 80 was not a provision of private law, but was an administrative decree having no extra territorial effect.

Dr. Rinesch, on the other hand, who was called by the Defendants, and who had practised in Vienna subsequently to 1938, and has practised in Vienna since 1938, said that Decree No. 80 is a private law in that it deals with the rights of persons in relation to their property, and that from the Austrian point of view it would have extra territorial effect.

Now, in the view that I take of the matter it is not necessary for me to arrive at a definite conclusion upon this matter one way or the other, and I do not intend to go further into the evidence which those gentlemen gave upon that point. I have no doubt that the Nazis intended to throw their net as wide as they could, and it rather emerges, I think, from a confidential inter-departmental document which the Germans circulated, and which appears on page 44 of the correspondence, that they themselves did take the view that it would operate, or at all events they hoped it would operate, outside Austrian territory. Moreover, it is a little difficult to see how the Commissar could function efficiently if the Decree was not extra territorial, at all events in relation to businesses which had foreign branches.

Be that as it may, I am satisfied, myself, that this decree was confiscatory in character and operation. It is said that even though the decree was preparatory to expropriation, that is to say, it was paving the way to expropriation, it was not confiscatory in itself, but that its object was to enable the German Government to take any steps required for the economy and political security of Austria; that it was not directed solely against the Jews; that it did not deprive a proprietor of his property but only of his power of disposition over it; that it did not divest a man of his business or property and vest it in the Commissar, nor did it affect property outside the business assets; and finally it was said, and said truly, that the Commissar allowed something like £1,000 in reichmarks to be made to the Plaintiff's wife at the instance of Mr. Hammerman.

Dr. Rinesch said that during the period of the administration by a Commissar the rights of a proprietor would be quiescent, but would arise again after its cessation. During the time of the administration the proprietor, he said, could not act for the business. He said that confiscation was the practice in cases of Jewish firms, but that it did not appear on the face of the decree. The object of the law, he said, was to enable, in practice, Hitler's regime to take over businesses which did not conform to his views, and he agreed that the decree deprived a proprietor of the use of his property and of its beneficial enjoyment. He said that generally speaking the law was applied to all Jewish firms in Austria, and also to some others as well, namely, Socialist, Communist and Catholic enterprises.

The Commissars had already been appointed of

Socialist and Communist concerns under the Schuschnigg regime, but these had to go when Hitler arrived, and new Commissars to take their place were appointed under this Decree No. 80.

On the face of it the Decree bears a semblance of innocence, but when one sees vague phrases such as "for the protection of important public interests", and "carrying on the businesses administered in a manner consonant with the public interest", one is entitled to enquire what manner of legislation it really was, and, for this purpose, to see what was done under it.

We know what happened to the Plaintiff. He told me about it in his evidence. Jail, deprivation of any voice in the conduct of his business, and appropriation of its assets without compensation, followed ultimately by permission to leave the country with nothing left to him but his life, his clothing and some furniture.

Dr. Bretsch said that in Austrian law the Commissar could not in any possible sense be regarded as an agent for the Plaintiff. He said that Mr. Schober was the statutory agent appointed by the State to act on his behalf. "The important public interests" in the Decree were regarded by the executive as being the elimination of the Jews, and the "public interests" referred to in section 3 were interpreted as being the Nazi interests.

Now, it is quite true that the Nazis did not openly and unashamedly steal the property of the Jews by decrees clearly and unambiguously worded, until later on, and from November 1938 onwards a series of laws was passed for the purpose; but if the expulsion by the State of a man both from the direction and the beneficial ownership of his business without compensation, coupled with the transfer of control to the State, for the benefit of the State, is not confiscation within the ordinary usage of that word, it is difficult to know what is.

Mr. Lawson cited some authority for the purpose of showing that what happened under this decree was not confiscation. He referred me to the case of Lepage v. San Paulo Coffee Estates Ltd., which is reported in 1917 Weekly Notes, page 216, but I think the only point that emerged from that decision really was that the English court over here recognised the title conferred upon the French official during the First World War who filled very much the position of the Custodian of Enemy Property in this country. I do not think any question of confiscation emerged from the case, or was argued.

Then he referred me to the case of The Bank of Ethiopia v. The National Bank of Egypt, which is reported in 1937 1 Chancery, page 513, and there again I do not think any question of confiscation of property arose. It was a case where a liquidator was appointed by a government which was recognised by His Majesty as being the Government of Ethiopia, and all that Mr. Justice Clauson (as he then was) who decided that case did was to recognise the validity of the appointment, and no questions such as I have to deal with here emerged in that case.

Neither of those decisions in my view are any

authority governing the circumstances of this case, and in my view, as I say, this decree is confiscatory legislation.

Mr. Lawson then said that even if the legislation must be regarded as confiscatory, our Courts will recognise the decree and enforce it here, having regard to His Majesty's recognition, as indicated in the Foreign Office letter which I have read, of the Hitler regime as the governing power in Austria, and that such recognition has retroactive effect.

Now, it is true that the legislation in Law No. 80 was not penal in the sense which was laid down by the Privy Council in the case of Huntington v. Attrill, which is reported in 1893 Appeal Cases, page 150, a case which was decided at a time when our Courts had not become as much accustomed as they have since become to governments of civilised communities expropriating the property of whole sections of their people without compensation. But confiscatory laws of this character, though not strictly penal in the sense laid down by the Judicial Committee of the Privy Council, or recognised and defined by the Judicial Committee, are regarded here in the same light as penal laws, as many cases show.

Now, there are a large number of authorities, and it will not be necessary for me to deal with them, or more than a few of them, but the general principle which our Courts apply in relation to penal laws was laid down many years ago in the case of Folliott v. Ogden, which is reported in 1 Henry Blackstone, page 123, and I only want to read one passage from the judgment of Lord Loughborough, who delivered the judgment of the Court. He said: "The penal laws of foreign countries are strictly local, and affect nothing more than they can reach and can be seized by virtue of their authority; a fugitive who passes hither, comes with all his transitory rights; he may recover money held for his use, stock, obligations and the like; and cannot be affected in this country, by proceedings against him in that which he has left, beyond the limits of which such proceedings do not extend".

The principle was recognised by Lord Justice Younger, as he then was in the case of In re Ferdinand, Ex-Tsar of Bulgaria, reported in 1921 1 Chancery, page 107, at page 144, and again by Lord Maugham (Mr. Justice Maugham as he then was) who decided the case of In re Russian Bank for Foreign Trade, reported in 1933 Chancery at page 745.

That was one of the cases where it was sought to wind up a Russian bank. The petitioner claimed to be a creditor for over £23,000. Expert evidence was given, and the view was expressed that the Bank had ceased to exist as a result of decrees made under the laws of the Union of Socialist Soviet Republics, which decrees had transferred its assets to the Soviet Government, and that payment could not be demanded from any person or body of persons.

Mr. Justice Maugham, as he then was, after pointing out that the Soviet legislation was not in terms extra territorial, said: "The Soviet Government does not itself assert that the nationalisation decrees have an extra territorial effect"; and, dealing with the matter which I am considering at the present moment, he said on page 767: "If the debt" -- That is to say, the petitioner's debt -- "was

primarily recoverable in London, I am of opinion that it was not affected by the Soviet legislation, even though it was due to a person who was a Russian subject at the date of the nationalisation decrees. Its locality must be taken to be the place where the debt was in the ordinary course recoverable".

Then he referred to certain authorities, and he said: "The decrees in question could not according to our laws have the effect of extinguishing the debt, if locally situate here, or of transferring it to the Soviet Republic. This follows, I think, from the decisions of Mr. Justice Hill and the Court of Appeal in The Jupiter. It is interesting to note that the same view is taken by the R.S.F.S.R. itself in a circular dated April 12, 1922, and in a circular issued by the People's Commissariat of Justice to all District Courts dated September 26, 1923, which are set out in the elaborate judgment of Mr. Justice Hill above referred to. These circulars show that the Soviet Government does not regard the nationalising decrees as having any extra-territorial effect even as against Russian citizens. Moreover, it is evident that our Courts have never entertained the view that a debt incurred here by a foreign corporation permitted to carry on business here under English law can be discharged by a foreign statute".

Then he refers, as an example of that, to the case of Employers' Liability Assurance Corporation v. Sedgwick, Collins & Co. and he says: "It may be observed that the decrees of the Russian Legislature in relation to insurance companies were on the same lines as those in relation to private banking companies at any rate to this extent, that the insurance businesses in Russia were nationalised so that the assets of such companies, so far as Russian statutes could effect such a result, were transferred to the Russian State. In the Court of Appeal Lord Justice Sargant in his judgment observed as follows: 'Nor do I think that the position of creditors here as against property of the Rossia Insurance Company here, such as debts owing to them from debtors in this country, is altered by legislation or decrees of the Russian sovereign power which "nationalised" the undertaking and assets of the Rossia Insurance Company, that is, as I understand it, purported to transfer these assets from their private proprietors to the Russian nation as a whole. Effective as such legislation may be within the limits of Russian territory, it cannot determine the ownership of property locally situate in this country, such as debts owing from debtors here; see Dicey, Conflict of Laws, 2nd edition, page 310, and Lecouturier v. Rey, an analogous case with reference to the goodwill of a trade mark or trade name in England'. This view was plainly concurred in by Lord Justice Bankes in the same case, and it must also have been accepted as correct in the House of Lords".

In the case of Banco de Vizcaya v. Don Alfonso de Borbon y Austria, reported in 1935 1 King's Bench at page 140, which arose out of the confiscation of the property of King Alfonso by decree, Mr. Justice Lawrence had to consider the substance of the right sought to be enforced, and whether its enforcement would directly or indirectly involve the execution of a penal law of a foreign state. He came to the conclusion that it would directly or indirectly involve the execution of a foreign penal law, and that the plaintiff's claim failed.

Then there was the case of Lorentzen v. Lydden and Company, Limited, reported in 1942 2 King's Bench, page 202, where Mr. Justice Atkinson considered in some detail the question of the confiscatory character of legislation. The head-note to that case was this: "The Norwegian Government made a decree by which all ships registered in Norway and situated outside the area in Norway occupied by an enemy power, and owned by (inter alia) a company carrying on business in that area, were requisitioned by the Norwegian Government, and the Norwegian Minister of Shipping, who was in the decree called 'curator', was given power to take over ships under construction outside the occupied area, and he was stated to be entitled to collect claims belonging to the owners, and to enforce such claims by action. The decree provided for compensation to be given for what had been taken under the decree. Acting under the powers conferred by that decree the curator brought an action on behalf of the owners of the steamship Tempo, who were a company carrying on business in Oslo, against the defendants, a firm carrying on business in London, to recover damages for breach by them of a contract to charter the steamship Tempofor the carriage of goods from Oslo to Leith. The defendants by their defence denied that the curator had any right or title to collect claims belonging to the owners of the steamship Tempo or to enforce the alleged claims, and said that the Norwegian Government could not by any legislative or executive act transfer the title to claims or other property situated in England. The issue as to the title of the curator to sue was ordered to be tried as a preliminary point. Held, that the decree, not being of a confiscatory character, had an extra-territorial effect and operated to pass the ownership of the chose in action which was situate in England to the curator appointed by the Norwegian Government, and that therefore the curator was entitled to maintain the action". -- It is to be observed that the reason why the learned Judge came to the conclusion that the decree was not of a confiscatory character was because of article 5 of the decree, which expressly provided for compensation for that which would be taken over pursuant to the order.

Mr. Justice Atkinson, after pointing out that "The situs of a debt or chose in action is, generally speaking, the country in which the debtor is to be found and sued", and after referring to the Russian Bank case which I have just mentioned, said with regard to the judgment of Mr. Justice Maugham on the point: "It is impossible to construe that passage as laying down a general rule of law. The learned judge was dealing with Soviet confiscatory legislation, and with the effect of decrees which did not purport to have extra-territorial effect. I cannot regard his decision as one governing the effect on a chose in action in this country of a decree which is not confiscatory and which in terms purports to deal with, and deal only with extra-territorial property. Therefore it seems to me that there is no authority which has been cited to me which prevents me from giving effect to this decree".

Then he sums the matter up at the bottom of page 215 by saying: "It seems to me that the English courts are entitled to take into consideration the following matters: that this is not a confiscatory decree, see article 5 of the decree, that England and Norway are engaged together in a desparate war for their existence, and that public policy demands that effect should be given to this decree. To suggest that the English courts have no power to give effect to

a decree making over to the Norwegian Government ships under construction in this country seems to me to be almost shocking. At any rate, where the dictates of policy are so plain, it seems to me that following that judgment and the judgments referred to therein I am entitled to give effect to the decree. It is not confiscatory, it is in the interests of public policy, and it is in accordance with the comity of nations. Therefore I determine this issue in favour of the plaintiff.

"Before I leave it, I would like to refer to the last case which has been decided on the point, the case of Banco de Vizcaya v. Don Alfonso de Borbon Y Austria". Then he set out the facts and the decision, and he said: "It was held that the defendant was entitled to retain them, Why? -- because the legislation was penal in character. It was on a par with confiscatory legislation".

Then I was referred to the case of Luther v. Sagor, a decision of the Court of Appeal, reported 1921 3 King's Bench, page 532, where Lord Justice Bankes at page 541 referred to the fact that the Russian legislation which was there in question must be recognised, this being necessitated by the recognition by His Majesty's Government of the provisional Government of Russia as the then existing Government of Russia, a fact, apparently, which was brought out between the hearing in the court of first instance and the hearing in the Court of Appeal.

Then he said: "Under these circumstances the whole aspect of the case is changed, and it becomes necessary to consider matters which were not material in the Court below. The first is a question of law of very considerable importance -- namely, what is the effect of the recognition by His Majesty's Government in April, 1921, of the Soviet Government as the de facto Government of Russia upon the past acts of that Government, and how far back, if at all, does that recognition extend. The second is a question of fact, whether sufficient evidence was given to establish the identity of the Soviet Government now recognised by His Majesty's Government with the Government which seized and confiscated and sold the appellants' goods". That point arose, putting it shortly, out of the fact that property, which had been seized under the decree, of a Russian subject in Russia, was subsequently sold and sent to this country and claimed by the true owners in the courts of this country.

Lord Justice Bankes said: "The Government of this country having, to use the language just quoted, recognised the Soviet Government as the Government really in possession of the powers of sovereignty in Russia, the acts of that Government must be treated by the Courts of this country with all the respect due to the acts of a duly recognised foreign state".

Then he said this, at the top of page 545: "It is necessary now to deal with the point made by the respondents, that the decree of confiscation of June, 1918, even if made by the Government which is now recognised by His Majesty's as the de facto Government of Russia, is in its nature so immoral, and so contrary to the principles of justice as recognised by this country, that the Courts of this country ought not to pay any attention to it. This is a bold proposition. The question before the Court is not one in which the assistance of the Court is asked to enforce the law of some foreign

country to which legitimate objection might be taken, as in Hope v. Hope and Kaufman v. Gerson. The question before the Court is as to the title to goods lying in a foreign country which a subject of that country, being the owner of them by the law of that country, has sold under an f.o.b. contract for export to this country. The court is asked to ignore the law of the foreign country under which the vendor acquired his title and to lend its assistance to prevent the purchaser dealing with the goods. I do not think that any authority can be produced to support the contention".

Then he dealt with a certain case, and he said, five lines from the top of page 546: "The respondents' position is rendered all the more difficult from the fact that the vendor in the present case is a duly recognised sovereign state whose law conferred the title which is challenged. Even if it was open to the Courts of this country to consider the morality or justice of the decree of June, 1918, I do not see how the Courts could treat this particular decree otherwise than as the expression by the de facto government of a civilized country of a policy which it considered to be in the best interest of that country".

Lord Justice Warrington expressed himself much to the same effect, and he said, about two-thirds down page 548; "It is well settled that the validity of the acts of an independent sovereign government in relation to property and persons within its jurisdiction cannot be questioned in the Courts of this country".

Lord Justice Scrutton expressed himself in this way, upon which Mr. Lawson placed some reliance; he said, at the bottom of page 557: "It remains to consider the argument that the English Courts should refuse to recognise the Soviet legislation, and titles derived under it as confiscatory and unjust. This was based on the general principle stated by Mr. Dicey in his work on the Conflict of Laws that 'English Courts will not enforce a right otherwise duly acquired under the law of a foreign country .... (B) where the enforcement of such right is inconsistent with the policy of English law, or with the moral rules upheld by English law, or with the maintenance of English political institutions'. When this is expanded later in the same work, the only head applicable to this case is 'Inconsistency with) 'Morality', that is, as supported by English Courts. There are very few instances in which this principle has been applied".

Then he referred to one or two cases, and then at the bottom of page 558 he said: "But it appears a serious breach of international comity, if a state is recognised as a sovereign independent state, to postulate that its legislation is 'contrary to essential principles of justice and morality'. Such an allegation might well with a susceptible foreign government become a casus belli; and should in my view be the action of a Sovereign through his ministers, and not of the judges".

Then there was the case of Princess Paley Olga v. Weisz and Others, which is reported in 1929 1 King's Bench at page 718, which was to all intents and purposes to the same effect as the case of Luther v. Sagor.

Then finally I was referred to the case of the

United States v. Belmont, reported in 31 United States Reports, page 324, a decision of the Supreme Court. I do not propose to go through that in detail, because it seems to me that it was a very special case. It was a case where a debt owing in New York to a Russian national came within the scope of the operation of the Soviet confiscatory legislation. It was assigned, together with other property, by the Soviet Republic to the United States Government, such assignment forming part of an international compact between the two Governments.

The two judgments, the majority judgment and the minority judgment, both held that notwithstanding any state law of policy the assignment must be recognised as valid. Both judgments were at pains to point out that they were not dealing with any question of beneficial ownership, and nothing is to be found in either of the judgments which would cause the least doubt upon the rule, which as far as I know is as much observed in America as in this country, that penal legislation or confiscatory legislation will not in general be enforced so far as regards property within the jurisdiction of the courts which are asked to enforce it. I think it is a special case in this sense, that the whole thing formed part of an international bargain between the United States and the Soviet Republic, and the decision was largely founded upon the conclusion, as was stated in the majority judgment, that no state policy can prevail against an international compact such as was there involved.

Now, having dealt with those authorities, it seems to me that their application arises in the following way: On the assumption that Decree No. 80 had extra-territorial effect, it was said that Mr. Schober became entitled under such decree to the credit balance in London standing in the books of Messrs. Exner, and to sue for it in the firm's name in London, and that that being so, the Defendants say that they were entitled and bound to accept Mr. Schober's direction as to what to do with the balance, and they in fact did so by setting off the same against the proceeds of their goods sold by Mr. Schober in Vienna, and that they accordingly did so, and could discharge themselves of the credit balance accordingly.

It does not appear to me that any of the authorities to which I have been referred gives the least support to this view, but they all show that as between Mr. Schober and the Plaintiff our Courts would not recognise or enforce the claims of Mr. Schober under decree No. 80 to the property in question here. It is true that our Courts would recognise Mr. Schober's title to property in Austria acquired by virtue of the decree, or his rights of control in relation to such property, conferred by that decree, even though such property was subsequently transferred over here, but in my judgment Mr. Schober would appeal in vain to the Courts of this country to assist him in establishing his claim to property which was and always had been situate within the jurisdiction.

Having arrived at that conclusion I would merely say that it would appear (although I do not rely upon it as the case is not even reported but only shortly mentioned), that Mr. Justice Simonds, as he then was, took a view of the German decree passed in relation to the Sudetenland similar to that which I have expressed, the case being mentioned in

Volume 190 of the Law Times Journal on page 54; but as I say, I do not place reliance upon it because the facts do not appear, and I do not know what precise form was taken by the decree which the learned Judge had there to consider.

Now, I have gone into all this because it was elaborately argued, but it seems to me that a shorter way of dealing with the point and arriving at the same result is to say that there is no shadow of evidence which has been adduced before me, either oral or in any document that is evidence against the Plaintiff, that Mr. Schober ever did give any directions at all to the Defendants to allocate the balance in the way that they did, and failing evidence of such directions, the Defendants' case based upon such directions obviously loses its foundation.

Mr. Exner gave some evidence, de bene esse, of a conversation which he had with Mr. Schober when Mr. Schober was in London, in which Mr. Schober had said that Mr. Exner could have the goods in Vienna if Mr. Schober had transmitted to him the balance here, that is to say, the credit balance in London, but that is all the evidence on the point which was forthcoming, and in my view it is not enough.

Then a subsidiary point was raised, saying that the evidence was that by Austrian law the Defendants would obtain a discharge by paying Mr. Schober. Well, perhaps they could obtain a discharge in that way, but personally I am unable to see how this affects a claim made by the true owner in this Court; and moreover, Messrs. Exner did not pay Mr. Schober, but they paid themselves. They still have the money in hand.

The next point is whether the Defendants are entitled to rely on the letter on page 24 of the correspondence, the letter of the 6th of May which I have already read, which was written by Mr. Wilhelm Frankfurther, as he said, under compulsion, as authority by the Plaintiff Mr. Frankfurther to treat Mr. Schober as the Plaintiff's agent.

I have read that letter on page 24 of the correspondence, the letter of the 6th of May, and as far as I can see on the question of construction it does not authorise or purport to authorise the Defendants to act upon the sole direction of the Commissar, but at the most it merely indicates that any direction given by Mr. Frankfurther requires also the consent of Mr. Schober.

That view of the matter is confirmed by the letter which Mr. Hammerman wrote, which is to be found on page 32 of the correspondence, in which he informs Messrs. Exner that "Herr Rudolf Schober and the Accountant Herr Diplom Kaufmann Gerhard Felser are coming to you with the consent of Herr Wilhelm Frankfurther and my consent", and so on. Well, if in fact Messrs. Exner were entitled to regard Mr. Schober as being the agent of Mr. Frankfurther, and as having the sole authority to deal with Mr. Frankfurther's business, neither the letter of the 6th of May nor the letter of the 1st of June from Mr. Hammerman are, in my view, in the least consistent with any such view.

Then it is to be observed, further, that apart altogether from that, the letter of the 6th of May on page 24 is more of a communication of a fact than the creation of an agency, and it informs the Defendants of what in fact has

been happening, namely, that the firm has been placed under the control of a Commissar.

Then Mr. Upjohn, on behalf of the Plaintiff, further said that in any case, even if that was not the right view, it certainly did not authorise Messrs. Exner to deal in a different manner with Mr. Schober from the matter in which they had been accustomed to deal with Mr. Frankfurther, namely, allowing and authorising Mr. Schober to sell goods without transmitting the proceeds of sale to London.

The point was also raised that Messrs. Exner cannot rely upon this letter because of duress, namely, the fact that it is clear that Mr. Frankfurther wrote it under compulsion, and as the result of threats. Mr. Paul Frankfurther in his evidence said that he told Mr. Exner on the 10th of May that it had been written under duress, and Mr. Exner denied that. Thus a conflict of evidence upon this point arises, and also, indeed, a conflict of evidence on other points arises, and the question of credibility therefore has to be considered.

The credibility of Mr. Paul Frankfurther was assailed on certain grounds. It was said that Mr. Hammerman in his evidence said that he was constantly in touch by letter with Mr. Paul Frankfurther, and Mr. Paul Frankfurther denied it, Mr. Paul Frankfurther saying that Mr. Hammerman did not write to him. I do not propose to refer to the passage in question in the evidence of Mr. Paul Frankfurther, but it seems to me that it is at least equivocal, because it seems to me that the person to whom Mr. Paul Frankfurther was referring in his evidence was not Mr. Hammerman at all, but was Mr. Exner. That I think is the way in which I should have read that evidence, upon a close study of it; but at all events, it does not seem to me to be a very formidable point, nor does the next point upon which Mr. Paul Frankfurther was assailed seem to me to be a very formidable one, namely, that he said that his firm was never in debit to the Defendants in April 1937, when it was subsequently transpired that it was.

I think those are the principal matters upon which it was suggested that the evidence of Mr. Paul Frankfurther ought to be treated with some suspicion, but as I say, I do not think, myself, that it amounts to very much. It is quite true that I did not have the advantage of seeing Mr. Paul Frankfurther in the witness box, which I should have liked to have had. On the other hand, I did have the advantage of seeing Mr. Exner in the witness box, and I frankly say that the manner in which he gave his evidence did not impress me very favourably in some respects. It seemed to me that he desired to give the impression that he was actuated at all times solely by a desire to help the Plaintiff and that he gave little thought to his own interests; that he was adopting everywhere a policy of appeasement throughout, with a view, as he said, to keeping the Commissar "sweet" for Mr. Frankfurther's sake. Having seen Mr. Exner I find it difficult to believe that his business interests were subordinated quite so completely to Mr. Frankfurther's welfare as he gave me to understand.

Apart from that, there are two matters which impress me a little. In the first place I do not believe that he never mentioned to Mr. Paul Frankfurther the goods in Vienna in May 1938. Mr. Exner told me that his firm was a small firm. The goods in Vienna were undoubtedly of some

value. His visit to the Consul in April had shown that he was apprehensive about their safety, and his case, which I must mention later on, that the credit balance in London was at his insistence to be treated as security for his goods in Vienna, are all considerations which, in conjunction with the troubled conditions in Vienna, which were known to him, show that his goods were a matter of consequence to him, and make it inconceivable to my mind that he should not have mentioned the goods to Mr. Paul Frankfurther, who was fresh from the scene, and should not have discussed them with him.

Secondly, there is the question of this £1,012 invoice, which I have already mentioned. It appears on page 6 of the correspondence, and Mr. Paul Frankfurther said that it was a wholly fictitious transaction. It purports to be a pro forma invoice for 10 bales of 5,000 skins, for a total sum of £1,012.11. 2d. Mr. Paul Frankfurther said that it was fictitious, and it was to enable him to get permission to send money to the Defendants. Mr. Exner denied this, and said that the invoice covered actual goods which Mr. Paul Frankfurther saw at their London warehouse, and in respect of which he asked for an invoice to be sent to him.

I find it difficult to accept Mr. Exner's evidence as to this, for two reasons, firstly, that it was wholly inconsistent with the postscript to the letter of the 11th September 1937 which appears on page 8 of the correspondence, a letter from Mr. Paul Frankfurther, which is to this effect: "Dear Mr. Guy, Please will you not forget to send me the invoice for which I asked you last Saturday for approximately £1,000".

Why Mr. Paul Frankfurther should ask for an invoice for £1,000, and not for "an invoice for the goods I ordered", if Mr. Exner's account of the matter is true, it is difficult to understand. But further than that, Mr. Exner was present at the cross-examination of Mr. Paul Frankfurther, in which he was cross-examined in regard to this matter on the footing that the transaction was a fictitious one, of the same type as certain other transactions which were admittedly not altogether what they appeared on the surface to be.

On the whole, I am only able to accept the evidence that Mr. Exner gave before me with some measure of reserve, and although it is not necessary for deciding the question of alleged authority in the letter of the 6th of May, I think it probable in the extreme that Mr. Paul Frankfurther did tell Mr. Exner of his belief of the circumstances in which the letter was written, and I am not greatly impressed by the fact that Mr. Paul Frankfurther acted on the letter to the extent of receiving the £20 and that he did not claim the balance of the credit.

As to the latter point, it is to be observed, firstly, that Mr. Paul Frankfurther was hoping to be taken on by the Defendants, as in fact he was, and secondly, that he was only an agent and had no right to demand the balance.

The next point is this: Mr. Exner says that the credit balance was, in some way which he described, agreed to be regarded as a security for the goods on consignment in Vienna. He said in evidence: "Paul always liked to have a lot of goods, and we are not a big company, and we could not afford to have a lot of goods there unless we had authority. We made this plain, and said that if he wanted more goods he

must provide cover. That was the subject of discussion between Paul and myself. The preliminary figure which was fixed and agreed to was that it should be not more than £2,000 worth of goods not covered. If there was £4,000 worth of goods there should be £2,000 cover". He said that by way of illustration. The figure of £2,000 was an approximate figure.

Then he said in cross-examination that when Mr. Paul Frankfurther came to see him on the 10th of May, they, Messrs. Exner, did not owe the balance in London to Frankfurther, but it was covered by goods, and Frankfurther's would not have had that quantity of goods unless Exner's had cover in London. It was not a case of credit, but it was a case of cover. The money was there to secure a certain amount of goods. Mr. Exner supposed that he had a credit with Frankfurther's in London, but it was cover, a credit to cover goods.

Mr. Paul Frankfurther in his evidence said that the question of cover never arose at all. Mr. Lawson says that there is no explanation of the presence of the credit balance in London except to provide cover at Exner's request, it being conceded, he said, on both sides, that it was at Exner's request that the balance was built up.

For my part I think the arrangement was a very nebulous one. Mr. Exner has not satisfied me at all that a definite arrangement for legal security or a legal charge was ever made, and it is obvious that the onus was upon him to do so.

It is to be observed that either the arrangement was not in being in April 1937, when there was a large debit balance against Messrs. Frankfurther, or it was ignored. I think, as Mr. Upjohn indicated, that the true explanation of the matter was this, that the Plaintiffs were very willing to get money to England, and Messrs. Exner were very willing to have it here. It was, as he said, always satisfactory to people forwarding goods to have the money over here, and it would be available for counterclaims or loss, and in that sense it might be treated as security.

But I am quite clear that the evidence does not establish any definite security, or agreement for security, in the legal sense, over and beyond the general feeling of security that Messrs. Exner would undoubtedly feel at having money of the Plaintiffs over here under their eye, and available in case of need.

Then comes the question of insurance, that is to say, the liability of the Plaintiff for insurance of the goods on consignment, and as to this there are only two references in writing, the first being in the original agency letter of the 13th December 1933, which I have already read, where the responsibility for insurance on the part of the Plaintiff is expressed to be "To see that they are properly insured against all risks", and also the endorsements which appear upon the pro forma invoices. There is one of these to be found on the 25th February 1938, on page 17 of the correspondence, which Mr. Exner said was to be found in all the pro forma invoices. The endorsement is: "Our own goods on consignment, you to be responsible for safety, insurance, etc."

Mr. Lawson relies upon the generality of the phrase,

"all risks", and he uses this matter as a shield against the claim that the Plaintiff is seeking to make. He says that the Plaintiff was under contractual obligation to insure the property against all risks; that he failed to do so, and therefore the Defendants have a claim for breach of contract which they can set off against the Plaintiff's claim.

He says that the goods on consignment were lost to the Defendants when the Commissar took over the business, and he further says that the Defendants were entitled to minimise their loss by dealing with the Commissar in the way in which they did deal with him. The Plaintiff says that "all risks" is confined to commercial risks.

Now, it is to be noted that the point only arises upon the hypothesis, which in my view is a sound hypothesis, that Mr Schober was not acting as agent for Mr Frankfurther, but as agent for the Reich, and that the Defendants had no authority from Mr Frankfurther to treat Mr Schober as Mr Frankfurther's authorised agent; and on this footing the Plaintiff says (and so far as I know he says truly) that the Defendants have not proved that they have suffered damage; and if they have suffered damage it was their own act which caused the damage, by their authorising a third party to sell.

In point of fact it would appear from the evidence given by Mr Paul Frankfurther, and I think it is a fact, that the property was sold at a price in excess of the original invoice price; but at all events it was sold on the express instructions of the Defendants, by a third party, who was not the agent of Frankfurther's, and who was not in any sense of Mr Frankfurther's selection.

Messrs Exner authorised and instructed, in so far as their instructions were necessary or required by the Commissar, the Commissar to sell the goods, and he sold them. Then Messrs Exner apparently, as far as I am aware, never tried to get the proceeds to this country, except in so far as Mr Exner asked Mr Schober to let him have the proceeds, and Mr Schober said: "I will let you have the proceeds, but I must have the balance"; but Messrs Exner, instead of taking any active steps beyond that, were content to resort to the credit balance which they held against the Plaintiff in London.

As far as I am aware they made no attempt to get the goods back from Vienna. I am unable to say exactly what took place with regard to this matter, but Mr Paul Frankfurther said that he did suggest that they should try to get them back; but be that as it may, it seems to me that the loss, if Messrs Exner suffered loss, was due to their authorising a third party to sell the goods, on terms which did not bind the third party to transmit the proceeds to London in any sense, and under which terms Messrs Exner did not seek to compel the third party, namely, Mr Schober, to transmit the proceeds to London, but as I say, they resorted to the credit balance instead.

Now, if that is a "risk", I am quite prepared to say that it is not a risk within the words "all risks", which comes within the document referred to on page 1 of the correspondence, or under the endorsement on the pro forma invoice. The Defendants did what they thought proper, and what they thought was most advisable in their interests,

and to secure their interests, and if in fact they got no money from Mr Schober, that was a risk which they had to take at the time, and against which, in my judgment, they are unable to hold the Plaintiff responsible.

Then there comes the question of interest on the balance in London. Mr Paul Frankfurther says that he thinks five per cent. was agreed from time to time on the balance. The evidence of Mr Exner was that there was an agreement merely to pay one sum in settlement of a particular dispute, and that one sum was referred to on page 9 of the correspondence in a letter of the 31st of December 1937, where Mr Wilhelm Frankfurther, or rather, Mr Paul Frankfurther on his behalf, notified Messrs Exner that "In accordance with the Agreement made during Mr Paul Frankfurther's visit to you I have debited your account with £8.10. 0d. for interest". It is to be observed that the Plaintiff never paid interest when the balance was against him, he never credited the Defendants with interest when the balance was against him, and in my view he has not made out any definite agreement for the payment of interest apart from that one particular sum which appears on page 9 of the correspondence. I think the arrangement was vague, and it would be unsafe for me to hold that the Plaintiff has made out any agreement as alleged. That being so, the Plaintiff says that he ought to have interest under section 3, I think it is, of the Law Reform (Miscellaneous Provisions) Act, which entitles the Court, or authorises the Court, to give interest.

Mr Lawson says that this is a matter of discretion, but it ought not to be exercised against the Defendants in this case, because they have not had their own goods, nor had they in their possession the proceeds of the Commissar's sales; and further they say that the Plaintiff was dilatory in bringing the action on for trial, and let it go to sleep.

With regard to the latter point, it is quite obvious that the evidence of Mr Paul Frankfurther was essential in this matter, and his history was that after getting over here the Writ was issued on the 21st of July 1939, he went to America in December of that year, and there he joined the United States Army, and remained in it and was not demobilised until 1943.

I think, therefore, that the apparent delay in bringing the action on for trial is explained and justified by the absence of Mr Paul Frankfurther, and so far as the question of the Defendants not having either the money or the goods is concerned, I cannot myself see how the Plaintiff can be blamed for that. They had the balance due to them in London, and if the Defendants adopted, as they did, a course which seemed good to them and which seemed calculated to preserve their interests, namely, a sale of their property in Vienna and the allocation to themselves in payment for those goods of the balance in London, and if, as I find, that course is not a valid course as against the Plaintiff, then the Defendants alone are to blame. I think that interest should be paid on the sum which may be found to be due from the Defendants to the Plaintiff, as from the 10th of May 1938 until the Order in this action, and I propose to give them that interest accordingly.

Then the final point in the whole of this complicated

litigation relates to the question as to whether the Plaintiff was right in saying that he had got not only an agency, but an exclusive agency from the Defendants. Mr Paul Frankfurther said that there was an arrangement made subsequently to the letter on page 1 of the correspondence for the exclusiveness of the agency. Mr Exner denied it.

Here, again, it is true that the Defendants seem to have paid commission to the Plaintiff on sales to old customers of the Defendants, but what the precise arrangements between the parties were I really do not know. It is clear that Mr Paul Frankfurther knew of some transactions between the Defendants and their customers and made no complaint and claimed no commission.

An instance of that appears on page 9 of the correspondence, where the matter of Munk, who was mentioned in the proceedings, a customer of the Defendants in Prague, was raised and discussed in a letter from Frankfurther's to Exner's.

On the whole, I do not think the Plaintiff has proved his case upon this point. The matter was a matter of discussion, it may be, many years ago, and vague discussions, and perhaps understandings were reached on the matter, but I do not think, myself, that there was really any definite contract that the agency should be an exclusive agency, and upon that point I find against the Plaintiff.

I think that covers it all, Mr Upjohn. Upon that, what is it that you say you are entitled to?

MR UPJOHN: Upon your Lordship's judgment I would ask your Lordship to look at the Statement of Claim, and I submit that I am entitled to judgment for the sum of £2,258.19.11d. That is agreed.

MR JUSTICE ROMER: I do not know whether that sum is agreed.

MR UPJOHN: Oh, yes, my Lord.

MR LAWSON: Yes, my Lord, it is agreed as being the sum shown on the 10th of May.

MR JUSTICE ROMER: Very well.

MR UPJOHN: Your Lordship said that I should have interest, but your Lordship did not say at what rate.

MR JUSTICE ROMER: Would you say 3-1/2 per cent., or 4 per cent.?

MR UPJOHN: In the case of a commercial transaction, my Lord, I should have thought it would be 4 per cent.

MR JUSTICE ROMER: What do you say, Mr Lawson?

MR LAWSON: I am in your Lordship's hands about it. Interest rates, of course, have gone down, and have been down ever since 1940. The basis of it is that the Defendants had the Plaintiff's money in their business, which in one sense of course they had, because they used that money; and I should have thought that a rather lower rate of interest than what one would expect on a commercial risk would be the proper rate in this case.

MR JUSTICE ROMER: It does not come into the Order.

MR UPJOHN: No, my Lord, either it is so, or it is not. I do not think I need ask your Lordship for any other leave except liberty to apply for the account in respect of transactions after the 31st of March. Then I ask your Lordship for the costs of the action, and I ask your Lordship to dismiss the Counterclaim with costs.

MR JUSTICE ROMER: You are not going to have the costs of the issue as to exclusive agency.

MR UPJOHN: That is a very small matter, my Lord, and occupied very little time. The substantial point here was whether the transactions with Mr Schober bound me, and that depended upon the letter of the 24th of May and what happened on the 6th of May, and it meant a lot of evidence about that.

MR JUSTICE ROMER: It is quite clear that you are entitled to the general costs of the action.

MR UPJOHN: Yes, my Lord.

MR JUSTICE ROMER: It is only that one issue, and I dare say the Solicitors can agree some small deduction in regard to that, but strictly speaking, if they cannot agree it, the Taxing Master will have to certify the costs relating to that.

MR UPJOHN: The complication of setting off one issue in the Taxing Office really becomes more expensive, very often, than paying no attention to it, and of course, one gets into those difficulties as to whether, if you are going to take off one issue, you are entitled to take off part of the general costs of the action as well. I submit that at the most the Defendants can have the costs of that one issue, and no part of the general costs of the action; but I ask your Lordship to say that it is such a trivial matter, and so little time was given up to it, and no documents were put in evidence about it, that really the costs incurred by it were so small that no attention should be paid to it.

MR LAWSON: My Lord, on the question of the costs of the issue upon which the Defendants have succeeded, I should have submitted that the proper Order was for the Defendants to have the costs of those issues, namely, the interest, which is small, and the question of exclusive agency. As to that latter issue, I heard what my learned friend said, that it was a minor point, but quite a lot of evidence was directed to it, and a certain amount of discovery was equally directed to it, so that there are obviously some costs relating to that issue, and I ask your Lordship that the Defendants should have those costs as against the Plaintiff.

MR JUSTICE ROMER: The trouble is that one gets into such awful complications if one gets the costs of some small issue separately taxed by the Taxing Master. I shall give you something, but I was wondering whether the Solicitors could agree upon a sum.

MR LAWSON: I think, my Lord, judging from certain nods of the head that I see, that the Solicitors seem to be of the view that they probably can agree about it.

MR JUSTICE ROMER: I think I shall have to put the Order in

strict form, and say that those costs shall be taxed and certified separately, if not agreed.

MR LAWSON: Yes, my Lord, if not agreed. Then they can be taxed if necessary, but I imagine that it will not be necessary.

MR JUSTICE ROMER: Then you are to have the costs of those issues.

MR LAWSON: If your Lordship pleases. Now, upon the general matter, your Lordship will appreciate that the Defendants would like to have an opportunity of considering and being advised upon your Lordship's judgment, and I would ask your Lordship to say that there should be a stay of execution for 21 days, and a stay thereafter if notice of appeal is given within 21 days.

MR JUSTICE ROMER: If it is diligently prosecuted.

MR LAWSON: Yes, my Lord, that would go without saying.

MR JUSTICE ROMER: That would be right, would it not, Mr Upjohn?

MR UPJOHN: There will be an opportunity of considering your Lordship's judgment, and of course we cannot say that an appeal would be frivolous, because important issues are involved, but I would ask your Lordship to say that it should be a term of any stay that the money should be brought into Court, or be paid into the joint names of the Solicitors within 21 days, or something of that sort, because we do not want to pursue our remedies in some other court. I am not suggesting liquidation would ensue, but still, it is a risk that we should have to consider. We do not want to have to pursue our remedies here and then find that we are taking a dividend in some liquidation. I do not say that it would be so, but I think this is a case in which we ought to be secured. Your Lordship knows what the position is, and I suggest that the money ought to be paid into Court.

MR JUSTICE ROMER: It would be satisfactory if it were put into an account in the names of both Solicitors?

MR UPJOHN: Yes, my Lord.

MR JUSTICE ROMER: That would be fair, would it not, Mr Lawson?

MR LAWSON: Yes, my Lord, I think that would be very fair. I would not resist that at all.

MR JUSTICE ROMER: When can that be done?

MR LAWSON: I would ask your Lordship to put it in this way, that there will be a stay for 21 days, and thereafter if notice of appeal be given and duly prosecuted diligently, on condition that in that event, that is to say, if notice of appeal is given and the stay is continued, the money is to be put into a joint account in the names of the Solicitors for both parties. I think we can agree about the terms of it.

MR UPJOHN: I think so.

MR JUSTICE ROMER: Very well, there will be a stay of execution, provided that notice of appeal is given within 21 days, and

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on condition that if notice is given the money shall be brought into the joint names of the Solicitors within 21 days.

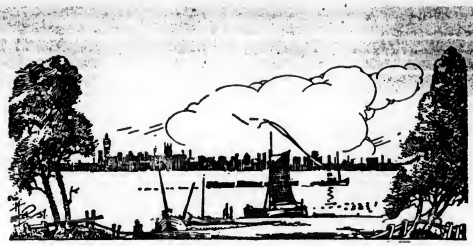
MR UPJOHN: My Lord, I think it might be desirable in this case that my learned Junior should sign a minute, because there are a number of matters.

MR JUSTICE ROMER: Yes.

MR UPJOHN: And my learned friend Mr Lawson will approve it.

MR JUSTICE ROMER: Very well, then, that will deal with that point.

MR LAWSON: If your Lordship pleases.



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medical man aboard the ship was being smitten by some dread disease, whilst all the other passengers remained in good health and unaware of his plight? If this was the case, who would minister to his needs? The thought did not bear contemplation, but nevertheless Carter went below to take his temperature.

The thermometer read 102 degrees even when he shook it down and repeated the procedure. The bare vibrating walls of his cabin cell gave him no comfort as he stared glassily around. Anxiously he retired to bed with a good stiff dose of aspirin laced with M. and B. tablets which were the only suitable things he could find. Fitfully he slept with the relentless throbbing of the ship's engines in his ears. The sweat rolled off him as the vessel ploughed relentlessly onward into the night.

When he awoke, he knew at once that the fever had left him. The brilliant sunlight streamed through the port-hole of his cabin as he rose and carefully negotiated his way to the wash-basin for a shave. He was immediately aware as he approached the mirror of a marked smooth swelling of his right cheek, extending below the ear. There was no doubting that the swelling could only be *mumps* which he had somehow missed as a child. How embarrassing yet, in a way, what a relief he felt. His feelings were really quite mixed. However would he explain such a swelling to any of the passengers on the ship.

He need not have worried, however, for everyone seemed so bent on pleasure that no one had time to contemplate the Ship's Surgeon's facial asymmetry. Moreover, few would have suspected mumps, which is more commonly associated, in the lay mind at least, with a bilateral swelling of the face. The only person in fact who did notice anything wrong with him was the Huddersfield industrialist's wife, who passed the comment that the Doctor's glands looked swollen, and he should know better than to stand on an open deck in the evening breeze without wearing a suitable muffler.

As the days of the cruise wore pleasantly on for the passengers, the facial discomfort and swelling of the young doctor began to resolve. There was still, however, some residual swelling which would be present when they docked.

There was sadness on board as the ship approached the home port early one morning, eight days after she had left. The end of the cruise was in sight. The ship slowed down in the river opposite the port. The officers and seamen scurried about, and the passengers, forever interested in new activities, looked upwards as an officer supervised the hauling aloft of a yellow flag.

"What is that flag?" queried the lady from Huddersfield of her more knowledgeable spouse.

"That is the Yellow Flag," he said. "It is a flag that must be flown by any ship coming in from a foreign port," he continued.

"It may only be lowered when the Ship's Surgeon has certified, and the Port Health Authorities are satisfied, that there is no infectious disease aboard ship!"

THE CORNER-TURN OR . . . ZHIVAGO IN HARVARD

By Walter Frankford

WHEN I leave Room 77 of the Hull Guildhall on Monday nights I find it difficult to decide if every man is a story unto himself, or if there is a pattern which stamps the few for the Elite, and leaves no room for the Anti-Hero. My ideal modern anti-heroes are the Good Soldier Schweyk and Dr. Zhivago.

The years 1922-24 were unsettled ones in Austria, but young people do not seem to notice the aftermath of a revolution, nor the approach of another one. Not even when a Russian boy joined a class of sixteen-year olds. He had walked across the frontier with his family from

Odessa in southern Russia and come to live outside Vienna. He soon spoke German well and settled down among us. It was a state school, open to everybody; one boy was a Count, a Thun-Hohenstein of the ancient imperial aristocracy, but most of us belonged to the "petite bourgeoisie" who did not grasp that we were at the end of a line, and certainly never imagined that leaving one's native country could ever be our inescapable fate.

The Russian boy must have been poor, but somehow one never thought of asking him to one's relatively well-stocked home. His tales of Russia, the Revolution, or Russian literature, which he knew well, were listened to with interest, but with no concern. It was another world, another race, which did not touch us.

At the same time a girl had joined our class. In 1922 Austria decided to catch up on modern education and to break nominally with the real clerical tradition which opposed co-education. A few girls were allocated to boys' schools. There was not much preparation for co-education and the best that could be done was to place the girls in the front row and treat them like boys. Our girl was a provincial maiden, who had moved to the capital because her father had become a Deputy. She looked rather colourless, quiet, blonde with that peculiar plaited Germanic hair-style, and an absent-minded look.

The Russian boy, Alex, had those burning intelligent eyes which penetrate people and knowledge. After a few weeks he told the form-master that he could not see the blackboard very well, and thus came to sit next to Erika, the girl from the Alpine province.

I was not aware that they took any more notice of each other.

After leaving school he studied economics at the University in Vienna, an odd choice in a poverty-stricken and bankrupt country. Once, one of his fellow-students told me that he was the best student of his year, but had no chance with his Marxist-Russian background.

In the years that followed I lost contact with him. I often wondered if the holocaust had swallowed him up, like most of my contemporaries.

Recently I worked for some months in Camden, New Jersey, and lived at the Walt Whitman Hotel. That is the only poetic aspect of this town, which stands as the living example of Galbraith's "Affluent Society", e.g. private affluence, but public squalor. However, there is a good library in Philadelphia, across the Delaware river and I spent many evenings there glancing at books. Such compilations as the American and the English *Who's Who* cannot be compared; almost anyone who will make an attempt to be mentioned can find a place in the American publication. Perhaps that is a good thing. One must really wish to be known in order to get known, and why wait until an invitation comes to qualify for the Elite. At random, like reading the London Telephone Directory on the Desert Island, not looking really for anything, I came across the name of my erstwhile class-mate.

It was he all right, with a great career as an educator, a real academic, who had been for some years a full Professor of Economics, with a Chair at Harvard University. The notice also mentioned that he was married to the Austrian girl who had been his neighbour on those peculiar and uncomfortable benches. I would have thought they were not really conducive to the beginning of a life partnership.

I wrote him a letter; as always, extravagant and full to the brim with enthusiasm, he phoned me early next morning at the Walt Whitman Hotel, and I visited him in his home in Shady Hill, Cambridge, Mass.

It was not difficult to pick up the threads and to bridge the years. He had become a handsome middle-aged man, living an un-American life with no gadgets, but books in the living-room, in the study, informed about everything. He did not try to impress me when he told me of his time in England when he stayed at All Souls, Oxford, and at Cambridge. His wife was most motherly and concerned

about him, and she produced an Austrian type of meal for us. Their two grown-up daughters had married Americans. To get where he was, he had had to begin several times from the start, which is the hardest task for the outsider, especially having to explain oneself over and over again.

On parting he gave me a reprint of one of his articles. It was on Pasternak's book *Dr. Zhivago*, and was full of the wisdom of a man who had been through several upheavals. There was a lot of common ground; but Zhivago, the medical man, had looked for the ills and had succumbed to them. Alex was a chess player, who had applied the moves to life, and was three moves ahead.

That, surely, is human quality.

AN EXTRACT FROM OUR BOOK REVIEW EVENING

19th February 1962

By RAYMOND HODGE

MR. President, Gentlemen,

Tonight, with the President's kind permission, I offer a short review, not of one book, but of a series of books by one author.

This author is Mr. Burton Bishop. He is not well known, but I think that you will shortly agree that his work is of some interest.

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Mr. Bishop's first book was nasty, brutish and short. I'm sorry. I read that badly. I mean that the *title* of the book was NASTY, BRUTISH AND SHORT. These words are, of course, part of Hobbes' celebrated remark in "Leviathan", which concludes:

> ". . . and the life of man, solitary, poor,
> nasty, brutish and short."

* * * * *

End of Robert Frankford Family Collection.